

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNIE P. HOWARD,

Defendant-Appellant.

UNPUBLISHED

January 11, 2000

No. 213982

Muskegon Circuit Court

LC No. 96-139323 FH

Before: Saad, P.J., and McDonald and Gage, JJ.

MEMORANDUM.

Defendant appeals as of right from his conviction of probation violation following his plea-based conviction of carrying a concealed weapon (CCW), MCL 750.227; MSA 28.424. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant pleaded nolo contendere to one count of CCW, and was sentenced to three years' probation. The terms of defendant's probation precluded him from possessing firearms, and subjected his residence to warrantless searches. One such search revealed the presence of firearms. Defendant was charged with violation of probation and, in a separate file, with being a felon in possession of a weapon, MCL 750.224f; MSA 28.421(6). The trial court found defendant guilty of violating the terms of his probation, and sentenced him to one and one-half to five years in prison, with credit for three days. Subsequently, defendant pleaded guilty to the charge of felon in possession of a weapon.

Defendant argues that because the Michigan Constitution guarantees individuals the right to keep and bear arms, Const 1963, art 1, § 6, the felon in possession statute must be deemed unconstitutional. *People v Zerillo*, 219 Mich 635, 638; 189 NW 927 (1922). In addition, defendant contends that application of the statute to him violated the ex post facto clause. US Const, art 1, § 9, cl 3. We disagree and affirm. Initially, we note that defendant's challenge to his conviction of being a felon in possession of a weapon is not properly before us, as it was not the underlying conviction that resulted in his being found guilty of probation violation. Nevertheless, we reject his challenge to the constitutionality of MCL 750.224f; MSA 28.421(6), for the reasons stated in *People v Green*, 228 Mich App 684, 692; 580 NW2d 444 (1998), and *People v Swint*, 225 Mich App 353, 375; 572 NW2d 666 (1997). Application of MCL 750.224f; MSA 28.421(6) to defendant did not violate the

ex post facto clause. The conviction that served as the basis for the charge of felon in possession of a weapon was the CCW conviction for which defendant received a sentence of probation.

Finally, we hold that the term of defendant's probation which precluded him from possessing firearms was rationally tailored to his rehabilitation. *People v Hellenthal*, 186 Mich App 484, 486; 465 NW2d 329 (1990). Defendant was on probation for a weapons offense, and had a history of using weapons in a manner contrary to the law.

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Hilda R. Gage